



REGISTRATION AND TAX EXEMPTIONS IN AFGHANISTAN

February 9, 2010

The purpose of this information sheet is to provide guidance to partners on how to register to legally operate in Afghanistan and to provide guidance on applicable tax exemptions. The information provided in this document should not substitute for each implementing partner seeking its own registration and tax advice. USAID expects each of its implementing partners to fully comply with the laws of the Islamic Republic of Afghanistan (IRoA).

Questions related to USAID tax exemptions and problems encountered with registration and the payment of taxes where exemptions apply should be brought to USAID's attention immediately.

I. REGISTERING AS AN NGO

The Afghanistan NGO Law was enacted on June 7, 2005, for the purpose of regulating the activities of domestic and foreign NGOs in Afghanistan. It provides the terms of establishment, registration, administration, activity, internal supervision, dissolution and liquidation of property of domestic and foreign NGOs. The law may be found in the Official Gazette No. 857/2005.

What is an NGO under the laws of Afghanistan?

An "NGO" is a domestic or foreign non-governmental, non-political and not-for-profit organization.¹ A foreign NGO is established outside of Afghanistan according to the laws of a foreign government.

How to Register an NGO in Afghanistan?

NGOs are registered by the NGO Department within the IRoA Ministry of Economy (MoE), which is responsible for both registering and supervising NGOs. There are two key laws that govern the establishment, registration and operations of civil society organizations: the Law on Social Organizations enacted November 2002 and the Law on Non-Governmental Organizations enacted June 2005.²

¹ Article 5.1.2.3.4.5 Afghanistan NGO Law

² Articles 11, 18 & 27 Afghanistan NGO Law

For NGOs receiving USAID funds, the entity must first proceed to the Ministry of Foreign Affairs (MoFA) with a letter from USAID³ introducing the organization as a USAID-funded organization to the MoFA for registration. The MoFA then sends the information to the MoE to register the entity as an NGO. According to the Afghanistan NGO Law⁴, an NGO must submit a semi-annual activity report and an annual activity report to the MoE. Failure to submit the reports could result in the dissolution of the NGO. The semi-annual report should be prepared in one original and three copies for submission to the central and regional offices of the MoE. In addition, an NGO must provide its annual financial statements/reports, prepared in accordance with international auditing standards, to the MoE.

How to register For-Profit Entities?

In order for a for-profit entity to register and begin work in Afghanistan, it must first register with the Afghanistan Investment Support Agency (AISA). AISA issues licenses for investors in manufacturing, health services, construction and the service sector such as consulting and security services. There are several for-profit entities (not NGOs) which are USAID partners/contractors implementing USAID funded programs in Afghanistan. These entities are registered at AISA as consulting/advisory services organizations implementing foreign donor assistance programs.

To register, the for-profit entity must first proceed to the MoFA with a letter from USAID introducing the organization as a USAID-funded organization to the MoFA for licensing at AISA.⁵ The MoFA then sends the information to AISA to license the entity as a for-profit entity. The implementing partner collects and completes the AISA forms and submits them to the licensing department of AISA. AISA then sends a letter to the Ministry of Finance (MoF) requesting information on whether the organization is exempt from taxes in accordance with our bilateral agreement with the GIRoA.

Once the AISA forms are completed, information on the organization is also sent to the Central Business Registry (CBR) for registration. The CBR is a “one stop shop” to register businesses combining all of the functions previously done by the Commercial Court, the Ministry of Justice (MoJ) and the MoF. The CBR facilitates the registration process for all businesses. The CBR issues the partner a Tax Identification Number (TIN)⁶, registers the business and publishes the information in the Official Gazette of the MoJ. The partner receives a registration number from the CBR which then allows AISA to issue the license. For more information on licensing at AISA, please visit www.aisa.org.af or contact Mr. Ghulam Rabani, Director of Licensing Department at +93 (0) 798 274500, ghulam.rabani@aisa.org.af.

³ The MoFA normally requires a letter of introduction from the Consular Office of the US Embassy in Kabul. However, the Consular Office has delegated the authority to provide introduction letters to USAID/Afghanistan. The delegation letter, Attachment 2, must be attached to the USAID introduction letter.

⁴ Articles 27 & 31 of Afghanistan NGO Law

⁵ The same delegation letter referenced in footnote 3 and found at Attachment 2 must also be attached to the USAID introduction letter to the MoFA for for-profit entities.

⁶ TIN: Individuals, companies and organizations which are, according to the Income Tax Law and the Customs Law, required to pay taxes or customs duties; social, non profit and welfare organizations which are required to withhold taxes from the salaries or wages of their employees are required to have a TIN.

II. TAXES

A. Tax Exemptions under Afghanistan Tax Law

Afghanistan's Income Tax Law, enacted in 1965 and amended in 2005 and most recently in 2009, was modeled on the U.S. tax law. Article 10 of the IROA Income Tax Law defines a category of "Tax Exempt Organizations" similar to a charitable organization under Section 501(c)(3) of the U.S. IRS Code. To qualify as an exempt organization under Article 10, an organization must be (1) established under the laws of Afghanistan, (2) organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes and (3) contributors, shareholders, members or employees either during the operation or upon dissolution of the organization ... must not benefit from the organization. The contributions and income received from the necessary operations of qualifying organizations are exempt from taxation.

B. Annual Tax Filing

The 2009 amendments to the Income Tax Law provide details of on the legal requirement for annual tax filing. Even though an entity may be exempt from taxes, the organization is still required to file a tax return if they fit the criteria as outlined in Article 87, regardless of the fact that they may owe no tax. Failure to file a return may result in penalties for failing to file. Annual income tax returns, as well as all other tax returns, are available at the Medium Tax Office.

C. Tax Exemptions for USAID Partners

The Point Four General Agreement for Technical Cooperation, dated February 7, 1951, is the framework bilateral agreement for all USAID activities in Afghanistan. It includes a provision that states that:

Any funds, materials and equipment introduced into Afghanistan by the Government of the United States of America pursuant to such program and project agreements shall be exempt from taxes, service charges, investment or deposit requirements, and currency controls.

In addition, USAID has four over-arching Strategic Objective Grant Agreements (SOAGs) with the GIRA that encompass all of the programs USAID finances in Afghanistan. The SOAGs contain identical tax exemption provisions that follow from and clarify the scope of the tax exemption contained in the 1951 Bilateral Agreement. The specific language of the tax exemption provisions in the SOAG is found in Attachment 1.

D. Withholding Tax on Subcontractor

In March 2009, a new provision was added to the Tax Law. Article 72 provides for a withholding tax on subcontractors. Subcontractors, who are not registered with AISA and that provide supplies, materials, construction and other services under contract, are subject to a 7% fixed tax in lieu of income tax. This tax is withheld from the gross amount payable to the subcontractor. However, subcontractors, who are registered with AISA and provide the services listed above, are subject to a 2% withholding tax. The tax withheld is creditable against subsequent tax liabilities for the subcontractor.

This tax is a withholding tax. The prime contractor is to withhold the tax from the subcontractor and remit the tax to the Da Afghanistan Bank to the account of the Medium Tax Office, bank account number #1203043. Forms for subcontract withholdings can be obtained at the Medium Tax Office.

Subcontractors, subject to this Article are required, upon signing the subcontract, to send a copy of the subcontract to the Medium Tax Office. Natural persons who earn taxable salaries are excluded from this provision. Under the USAID Tax Exemption language in our SOAGs, the withholding only applies to national subcontractors, i.e. Afghan subcontractors.

Foreign subcontractors are exempt from such withholding. However, USAID prime contractors/partners are not exempt from withholding this tax on their Afghan subcontractors. The SOAG exempts non-national organizations and persons from the withholding – not Afghan organizations or Afghan citizens.

Foreign/International subcontractors to USAID prime contractors are exempt from taxes under the SOAGs, similar to their prime contractors. However, the legal division of the Afghanistan Revenue Department (ARD) must issue a letter (exemption certificate) to each exempt subcontractor in order to effect the exemption for administrative purposes under Afghan law. In other words, each subcontractor must have an official exemption letter from the ARD. To obtain the exemption certificate, the prime contractor submits a letter to the ARD Legal Department on behalf of its subcontractors requesting the exemption, i.e. a private ruling. A copy of the subcontractors cover sheet to its contract must be included with the request. The Legal Department of ARD has copies of the SOAG, so it is not necessary to provide the SOAG as an attachment. The letter however should reference that the prime and the subcontractor are implementing a USAID activity under the applicable SOAG. The Legal Department will review the documents and issue a letter confirming exemption. If the exemption letter is not issued by ARD, the subcontractors will not be exempt from tax.

Question 1: Do the Tax Exemption Provisions in the Bilateral Agreement and SOAGs Provide a Blanket Tax Exemption for All USAID Implementing Partners for All Taxes in Afghanistan?

No. For USAID implementing partners, the tax exemptions described here only apply to funds provided by USAID. For funds received from any other source, including other U.S. Government agencies, implementing partners should check with those donors to determine whether any such non-USAID funds also benefit from a tax exemption. In addition, there are different tax exemptions for “national” and “non-national” organizations.

Question 2: How do the Tax Exemptions Affect Payment of the “Rental Property Tax” in Afghanistan?

The rental property tax imposes a withholding tax on landlords for real property as follows:

- If the monthly rent is more than Afs.10, 000 (\$200) and less than Afs.100, 000 (\$2000) - 10 percent.
- If the monthly rent is more than Afs.100, 000 (\$2000) -15 percent.

The law requires the renter to withhold the tax on behalf of the landlord. The rental property tax is a tax on the landlord not on the renter. The withholding is merely transferring a part of the landlord's income (the rent) to the GIROA to cover the tax.

Whatever the arrangement between landlord and renter, the USAID tax exemption is not applicable since the tax is on the landlord.

Question 3: How do the Tax Exemptions Affect Payment of the Income Tax in Afghanistan?

In Afghanistan, there is an income tax on organizations and individuals. There is also a business receipts tax (BRT) which is a type of income tax on gross receipts of for-profit organizations.

The tax exemption described above exempts all non-Afghan national implementing partners (both organizations and individuals) from paying taxes on their income, profits, or property. This includes social security or other similar type of taxes. The exemption does not extend to Afghan nationals. USAID implementing partners are required to withhold income tax on their Afghan national employees⁷ and subcontractors including BRT⁸. The BRT is a tax which is collected from total gross income (sales) before any deduction. The exemptions are not applicable to Afghan organizations even though they are receiving USAID funds. Once again, however, it should be noted that the exemption only applies to USAID funds. Funds received by organizations or individuals that cannot be tracked back to USAID is not subject to the exemption. If organizations or individuals are receiving funds for assistance activities from other donors or other U.S. Government agencies, they should check with those donors or other U.S. Government agencies to see if any tax exemptions are applicable to such funds.

Question 4: How do the Tax Exemptions Affect Payment of Customs Duties, Tariffs, Import Taxes or Other Levies on the Importation, Use and Re-Exportation of Goods into or out of Afghanistan?

The tax exemptions apply to all goods brought into the country for use on a USAID-financed assistance project. The exemption applies to such goods whether they are brought in by Afghan national or non-Afghan implementing partners.

In addition, non-Afghan implementing partners may bring in personal belongings and effects for the non-Afghan national employees (including personally-owned automobiles, for example) for personal use (not for resale, however) and for the personal use of their family members.

Question 5: How do the Tax Exemptions Affect Payment of the VAT, Sales Taxes, Taxes on Purchases or Rentals of Real or Personal Property or other Taxes Levied on the Last Transaction for the Purchase of Goods or Services Financed by USAID in Afghanistan?

⁷ The income tax of legal persons is 20 percent of its taxable income in the fiscal year

From Afs.0 to Afs.5,000 monthly - 0%

From Afs.5,001 to Afs.12,500 - 2%

From Afs. 12,501 to Afs. 100,000 - 10% + Afs. 150 fixed amount

From Afs. 100,000 above - 20% + Afs.8,900 fixed amount

⁸ BRT is imposed on natural persons who provide goods or services in exchange for consideration and whose revenue from such sales is 750,000 Afghanis or more per quarter of the year

To the extent that such taxes are imposed, the tax exemption will apply for goods and services purchased for use in activities financed by USAID. To the extent the purchase of a good or service would not be an allowable cost under an implementing partner's agreement with USAID, the exemption would not apply (for example, individual employees' purchases of personal effects are not allowable costs under USAID assistance agreements and therefore would be subject to the sales tax should one be instituted in Afghanistan).

Question 6: What Happens if the GIRoA Collects a Tax Despite the Existence of an Applicable Tax Exemption?

USAID will work with the GIRoA through the MoF to try to ensure that, when exemptions apply, no taxes will be collected. However, it is likely that there will be cases where taxes will be collected despite the best intentions of all parties to comply with the terms of the Bilateral Agreement and SOAGs. USAID agreements with implementing partners should contain a provision related to reporting of foreign taxes. If an implementing partner's agreement does not contain such a provision, it should contact its USAID Contracting Officer or Agreement Officer and request inclusion of such standard provision. USAID will then seek reimbursement of reported taxes from the GIRoA. Implementing partners should also advise USAID if there appears to be a tax being charged that should be subject to an exemption so that USAID can discuss the situation with the GIRoA/MoF.

If an implementing partner has any question about whether its payment of a tax under its agreement with USAID would be an allowable cost under its grant or contract, it should check with its USAID Contract or Agreement Officer for clarification.

For questions or information, please contact:

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ATTACHMENT 1

SOAG TAX EXEMPTION PROVISION

Section B.4. Taxation

- (a) General Exemption: The Agreement is a program agreement under the terms of the Point Four General Agreement for Technical Cooperation, dated as February 7, 1951, between the grantee and the USG, and the assistance thereunder is free from any taxes imposed under laws in effect in the territory of the grantee.
- (b) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to , but is not limited to 1) any activity, contract, grant of other implementing agreement financed by USAID under this agreement, 2) any transaction or supplies, equipment, materials, property or other goods (hereinafter collectively “goods”) under (1) above, 3) any contractor, grantee, or other organizations carrying out activities financed by USAID under this agreement, 4) any employee of such organizations, and 5) any individual contractor or grantee carrying out activities financed by USAID under this agreement.
- (c) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to , but is not limited to the following taxes:
 - 1) Exemption 1. Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for the personal use of non-national individuals or their family members. Exemption 1 includes, but is not limited to; all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo.
 - 2) Exemption 2. Taxes on the income, profits or property of all 1) non-national organizations or any type, 2) non-national employees of national and non-national organizations, or 3) non-national individual contractors and grantees. Exemption 2 includes income and social security taxes of all types and all taxes on the property, personal or real, owned by such non-national organizations or persons. The term “national” refers to organizations established under the laws of the grantee and citizens of the grantee, other than permanent resident aliens in the US.
 - 3) Exemption 3. Taxes levied on the last transaction for the purchase of goods or services financed by USAID under this agreement, including sales taxes, value-added taxes (VAT), or taxes on purchases or rentals of real or personal property. The term “last transaction” refers to the last transaction by which the goods or services were purchased for use in the activities financed by USAID under this agreement.
- (d) If a tax has been levied and paid contrary the provisions of and exemption, USAID may, in its discretion, 1) require the Grantee to refund to USAID or to others as USAID may direct the amount of such tax with funds other than those provided under the agreement, or 2) offset the amount of such tax from amounts to be disbursed under this or any other agreement between the parties.
- (e) In the event of a disagreement about the application of an exemption, the Parties agree to promptly meet and resolve such matters, guided by the principle that the assistance furnished by USAID is free from direct taxation, so that all of the assistance furnished by USAID will contribute directly to the economic development of the country of the Grantee.

Attachment 2
Embassy consular office delegation letter



Embassy of the United States of America

January 18, 2010

Protocol Department
Ministry of Foreign Affairs
Islamic Republic of Afghanistan

To Whom It May Concern:

The Consular Section of the United States Embassy in Kabul, Afghanistan, hereby delegates to USAID/Afghanistan the authority to sign and transmit letters to the Ministry of Foreign Affairs (MoFA) introducing all USAID funded non-governmental organizations and for-profit organizations to the MoFA for registration purposes.

If you have any questions regarding the above delegation, please contact the Consular Section of the U.S. Embassy in Kabul. Thank you for your assistance in this matter.

Sincerely,


Randall Merideth, Consul



Cc:
Mr. Zalmai Wafamal, Desk Officer, UNO and International Financial Institutions, MoFA
Ms. Sohaila Noori, MoFA
Ms. Ann Marie Yastishock, Senior Legal Advisor, USAID/Afghanistan
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